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(revised 5/5/2020)

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- h. "Website" means our internet site at [www.pond5.com](http://www.pond5.com), and the other Pond5 branded internet sites of Pond5 and its Affiliates.

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  - ii. directly or indirectly copy, publish, publicly display and perform, transmit, broadcast, telecast and distribute the Content within such Production(s) world-wide and by any means now known or hereafter devised and

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  - ii. publicly display and perform ("Distribute") the Content within such Digital Production(s) by means of – and only by means of – digital streaming through the internet; and
  - iii. use the Content Information internally to facilitate the foregoing with regard to the Content.
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- i. **Single Project:** you may only use the Content in a Single Project
  - ii. **Print, Film and Physical Media Excluded:** You may not use of the Content in or on any printed media or work, film or physical media (e.g., CD or DVD) or merchandise.
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    1. Over-The-Top (OTT) Video On Demand apps;
    2. YouTube;
    3. Facebook;
    4. Instagram;
    5. Snapchat;
    6. Twitter;
    7. Pinterest; and/or
    8. Your website or mobile app.

## 4. License Tiers

- a. **License Tiers:** If you purchased a "Business License" or a "Premium License" for the specified Content from Pond5, the License granted to you for such Content will be on the terms and conditions of this Agreement with the variations and additions that this Agreement states apply to such License. Otherwise, the License will be an "Individual License". For information about Business Licenses or Premium Licenses, contact us at [sales@pond5.com](mailto:sales@pond5.com).
- b. **Number of Seats:**
- i. If we have granted you an Individual License, you may allow access to or use of raw Content on your behalf to no more than 1 individual. The individual who Downloaded the Content through the Website will be deemed to be that person unless at the time of Download another individual was designated by the Pond5 User on the checkout page of the Website or otherwise in writing to us.
  - ii. If we have granted you our Business License for the Content, you may allow access to or use of raw Content on your behalf to no more than a total of 5 natural persons over time.
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- e. **No Use in Trademarks or Logos:** You may not incorporate any Content into a logo, trademark or service mark.

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including use (i) in connection with pornography, adult videos, adult entertainment venues, escort services, dating services, or the like; (ii) in connection with the advertisement or promotion of tobacco products; or (iii) depicting a person in the Content as engaging in acts of moral turpitude or criminal activity.

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## 6. Content Showing Depicted IP and Placeholders.

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- b. **Audio in Video Clips:** For Content that is film, video footage or any other audiovisual work, any music, dialogue or other ambient audio contained therein is incidental only; accordingly, our warranties do not apply to, and you are solely responsible for obtaining any additional clearances relating to, any of the audio that may be required.
- c. **Placeholders in After Effects and PSD Templates:** After Effects and Photoshop PSD templates may contain placeholder music, dialogue, other audio, text, video and/or images. Such placeholders are intended only for demonstration purposes, so our warranties do not apply to such placeholders and you are solely responsible for obtaining your own cleared versions of the same.

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For Content which the Item Page states is editorial or for editorial use only (collectively, "Editorial Content"), in addition to the other limitations and restrictions in this Agreement, the following terms apply:

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- b. **No Commercial or Merchandizing Use:** Absent Pond5's express and specific written (could be by email) consent, Editorial Content may not be used in any Merchandise, advertisement (other than in-context advertising of a Production in which Editorial Content has been incorporated), endorsement, promotion, advertorial, or other commercial Production.
- c. **Clearances:** We and our Editorial Content contributors disclaim any responsibility for having any clearances for, and any and all warranties related to, personally identifiable information of any person, or any privacy or publicity rights from any person whose name, portrait, image or performance appears in the Content.
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- a. **Types of Audio Content:** We offer various kinds of music and other audio recording Content without video, pictures or other visual works ("Audio Content"), which may be designated on the applicable Item Page, among

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- c. **Restrictions on All Audio Content:** In addition to the other restrictions in this Agreement, you may not do any of the following regarding any Audio Content:
- i. use it in whole or part to manufacture, distribute or sell records, CDs, jukeboxes, mp3s or any other predominantly audio product embodying it, in whole or in part, that is not synchronized or combined with other audio or musical content to create a derivative work as permitted in this Agreement (for example, you cannot use it to create a CD or other music compilation to give away or sell);
  - ii. place it on or in any product or platform that makes it available in a manner such that a person can without extraordinary effort extract or access or reproduce it as an electronic file;
  - iii. use or display it in whole or part in an electronic format that enables it to be accessed or distributed or shared in any peer-to-peer or similar file sharing arrangement;
  - iv. resell it in whole or part as backgrounds, "hold" music or ringtones; or
  - v. incorporate it in whole or part in any product or platform that results in its re-distribution or re-sale (such as music download sites, stock music CDs, electronic greeting card web sites, web templates and the like).
- d. **Audio Content Cleared for Sampling:** For Audio Content designated on the Website as being "Cleared for Sampling", you may do any of the following:
- i. edit, modify, or alter it;
  - ii. use it in whole or part with other original work(s) of authorship so that the combination constitutes a Production;
  - iii. use it, in whole or in part, as an element of a new musical work (e.g., by combining the Audio Content with other work so that a copyright can be claimed in the resulting song); or
  - iv. modify it, in whole or in part, so that a copyright can be claimed in the resulting song other than as part of a Production that consists of an audio visual work, computer or mobile device application or an internet page.
- e. **Restrictions on Audio Content Not Cleared for Sampling:** Unless the Audio Content is designated on the Website as being "Cleared for Sampling", you may not do any of the things mentioned in paragraph (d) above; provided that you may do basic editing (e.g., setting fade-in/fade-out points, determining start and end points, or using only a portion of it), in a way that does not alter its fundamental character, harmonic structure, lyrics and/or melody or prejudice of the un-waivable moral rights of the artist(s).

## 9. Credit Attribution.

- a. For Editorial Content, you will accompany the Production with a credit line that attributes the Content to the Content contributor and Pond5, and if the Production is posted online, you will use your commercially reasonable efforts to make the credit line include a hyperlink to [www.pond5.com](http://www.pond5.com).
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your exclusive remedy under this paragraph will be as follows: (i) upon request to us within 30 days of the download of such Content, you will be permitted to download the Content again to obtain a replacement copy of the Content; or (ii) if we determine, in our sole discretion, that defects would continue to prevent it from being downloaded from the Website or used as permitted herein successfully, we will refund the fee actually paid by you for such Content.

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## 11. Indemnification.

- a. **Our Indemnity:** Subject to the limitations in Section 12(b), we will defend, indemnify and hold you harmless from any actual or threatened third party lawsuit, claim, or legal proceeding (each, a "Claim") alleging a breach or facts that if true would constitute a breach of any of our express representations and warranties in this Agreement or that the distribution or use of Content downloaded and used by you pursuant to this Agreement would result in the breach of any of such representations and warranties (each, a "Pond5 Indemnified Claim"), together with any liability for direct damages arising therefrom and reasonable attorneys' fees connected therewith, provided in each case that you have paid all amounts due to us and have not otherwise materially breached the terms of the Agreement.
- b. **Indemnity Conditions:** Our obligations under paragraph (a) above (the "Pond5 Indemnification") are conditioned upon you complying with the requirements of this paragraph: (i) You must notify us in writing of the Claim as soon as is practical, but in any case no later than ten (10) business days from the date you know or reasonably should have known of the same. Such notification must include all details of the Claim then known to you (e.g., Pond5 Content Number, a copy of the Content and your Production, name and contact information of person and/or entity making the Claim, nature and date of the Claim, copies of any correspondence received and/or sent in connection with the Claim). The notification must be sent to us at our address on our Website via Certified Mail, Return Receipt Requested, or reputable express delivery service, in each case, recipient's signature required, with a contemporaneous email copy to [legal@pond5.com](mailto:legal@pond5.com). (ii) You must allow us to assume and control the investigation,

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- d. In addition to the notice requirements in Section 11(b) above, no action, regardless of form, arising out of the License, or under this Agreement may be brought by you more than one year after the cause of action has accrued.

## 13. Term and Termination.

- a. **Material Breach by You:** The License will terminate automatically without notice from us if you fail to cure a material breach or other material failure to comply with any provision of this Agreement within 14 days of written notice from us of the same. Upon termination, to the extent reasonably practical, you must yourself and must cause your Representatives to immediately: (i) stop using the Content; (ii) delete or remove the Content from your

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for Content under any circumstances, except upon a material breach of one of our express representations and warranties set forth herein for such Content. However, if you request a refund, and we, in our sole discretion, determine to provide you with a refund, the license granted in this Agreement for the Content will be rescinded as if never granted. Any refund will be made by such means as we determine is appropriate.

- b. **Taxes:** You are responsible for promptly paying any and all applicable sales taxes, use taxes, value added taxes, property tax, customs, duties and any related interest or penalties imposed by any jurisdiction as a result of the License or any use of the Content.
- c. **No Set-Off, Withholdings or Deductions:** You must pay all amounts due to us in a payment currency approved on the Website without any set off, deduction or withholding of any kind, including tax withholdings or amounts charged for currency conversion. To the extent that you determine that you are required under law (e.g., under a tax law) to withhold any amount from payments due to us or a financial institution or other intermediary deducts any amount for currency conversion or other services from your payment to us, the price for the applicable License is hereby increased by the amount that would cause the net amount actually received by us to equal the price that would otherwise apply for the sale of the License.

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- a. **You:** As used in this Agreement, the term, "Licensee", "you" and "your" refer to the person designated as "Licensee" when the Content is downloaded from the Website or otherwise first Downloaded. A Person may not Download Content unless he or she is the Licensee or has authority to and does in fact bind the designated Licensee to this Agreement.
- b. **Us:** If Licensee is located in the United States, then the party with which you are contracting is, and as used herein the terms "Pond5", "we", "us" and "our" refer to Pond5, Inc., a Delaware corporation. If Licensee is located outside the United States, then the party with which you are contracting and which is granting you the License is, and as used herein the terms "Pond5", "we", "us" mean, Pond5 Media Ireland Limited, an Ireland -based subsidiary of Pond5, Inc., and "our" means the possessive of whichever of the foregoing is applicable.

## 16. Miscellaneous Provisions.

- a. **Consent to Electronic Communications:** You consent to receive communications from us electronically and you agree that all agreements, notices, disclosures and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.
- b. **You Consent to Us Processing Your Data in Different Countries:** You consent to your personal information being shared with and processed in the course of our business by us and our Affiliates, which are located in Ireland, various other different countries in the EU or in the U.S., which provide varying and in some cases less privacy protection than your country.
- c. Unless the context requires otherwise, in any part of this Agreement: (i) "including" (and any of its derivative forms, e.g. "includes"), "e.g." and "for example" means "including but not limited to"; (ii) "must not", "should not", "shall not" and "may not" are expressions of prohibition, and "will", "must", "should" and "shall" are expressions of command, and not merely expressions of future intent or expectation; (iii) use of the singular imports the plural and vice versa; (iv) references to one or no gender include the other or no gender; (v) when applied to a company, "Affiliate(s)" means any/all companies that from time to time directly or indirectly are owned or controlled by such company, under common ownership or control with such company or own or control such company; (vi) "Person" means an individual or legal entity, including a company or a governmental agency or instrumentality; and (vi) the headings in this Agreement are for ease of reference only and shall not affect its interpretation.
- d. This Agreement is in addition to the Website [Terms of Use](#), the Pond5 [Privacy Policy](#), and the other terms, disclaimers, restrictions contained on the applicable Item Page at the time of Download of the Content item (collectively, the "Website Terms"), (which are all incorporated by reference into this Agreement), all of which together with this Agreement embody the parties' entire agreement and supersedes and cancels any prior or



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- f. If you learn that any Content is subject to a threatened or actual third party claim of infringement, violation of another right, or any other claim for which we may be liable, you will promptly notify us of any such claim. If we learn of such a claim from any source and we, in our sole good faith discretion, determine that the claim raises an inappropriate legal risk, upon notice from us, you will (i) remove the Content from your computer systems and storage devices (electronic or physical), and (ii) cease any future use of the Content at your own expense if possible. If you do remove and cease use of the Content, we will either refund your license fees for the applicable Content or without charge provide you with other content that we determine with your consent, not to be unreasonably withheld or delayed, is comparable, subject to the other terms and conditions of this Agreement.
- g. The parties to this Agreement are independent contractors, and nothing in this Agreement or the License shall create a joint venture, partnership or franchise or fiduciary relationship between the parties.
- h. If any provision, or portion thereof, of this Agreement, or its application to any person or circumstance, shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement, or such provision and their application shall not be affected thereby, but shall be interpreted without such unenforceable provision or portion thereof so as to give effect, insofar as is possible, to the original intent of the parties, and shall otherwise be enforceable to the fullest extent permitted by law.
- i. This Agreement shall be construed in accordance with the laws of the United States and the State of New York without regard to its choice of law provisions. The United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement. The License, any Download of Content and access to and use of the Website and the entering into this Agreement will be deemed to take place in the United States.
- j. Any dispute relating to or arising from this Agreement, the License, the Content or the use thereof will be resolved exclusively by a State or Federal court in New York City in the United States. You hereby waive any objection to venue, or to the inconvenience of the forum, of any such court or right to trial by jury to resolve any such dispute. The parties hereby consent to the jurisdiction of such courts.
- k. You will promptly reimburse us for any costs (including reasonable attorneys' fees and court costs) that are incurred by us in collecting any License fees due to us.
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